



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92449; File No. SR-NYSEArca-2021-61]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Reflect an Amendment to the Application and Exemptive Order Governing Shares of Active Proxy Portfolio Shares Issued by T. Rowe Price Exchange-Traded Funds, Inc. Which are Listed and Traded on the Exchange

July 20, 2021.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on July 7, 2021, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to reflect an amendment to the Application and Exemptive Order governing the following funds, shares of which are listed and traded on the Exchange under NYSE Arca Rule 8.601-E: T. Rowe Price Blue Chip Growth ETF, T. Rowe Price Dividend Growth ETF, T. Rowe Price Growth Stock ETF, T. Rowe Price Equity Income ETF, and T. Rowe Price U.S. Equity Research ETF. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange adopted NYSE Arca Rule 8.601-E for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges (“UTP”), of Active Proxy Portfolio Shares, which are securities issued by an actively managed open-end investment management company.⁴ Commentary .01 to Rule 8.601-E requires the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Active Proxy Portfolio

⁴ See Securities Exchange Act Release No. 89185 (June 29, 2020), 85 FR 40328 (July 6, 2020) (SR-NYSEArca-2019-95). Rule 8.601-E(c)(1) provides that “[t]he term “Active Proxy Portfolio Share” means a security that (a) is issued by an investment company registered under the Investment Company Act of 1940 (“Investment Company”) organized as an open-end management investment company that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies; (b) is issued in a specified minimum number of shares, or multiples thereof, in return for a deposit by the purchaser of the Proxy Portfolio and/or cash with a value equal to the next determined net asset value (“NAV”); (c) when aggregated in the same specified minimum number of Active Proxy Portfolio Shares, or multiples thereof, may be redeemed at a holder’s request in return for the Proxy Portfolio and/or cash to the holder by the issuer with a value equal to the next determined NAV; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.” Rule 8.601-E(c)(2) provides that “[t]he term “Actual Portfolio” means the identities and quantities of the securities and other assets held by the Investment Company that shall form the basis for the Investment Company’s calculation of NAV at the end of the business day.” Rule 8.601-E(c)(3) provides that “[t]he term “Proxy Portfolio” means a specified portfolio of securities, other financial instruments and/or cash designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series.”

Shares on the Exchange. Pursuant to this provision, the Exchange submitted proposals to list and trade shares (“Shares”) of Active Proxy Portfolio Shares of the following Funds listed and traded on the Exchange under NYSE Arca Rule 8.601-E: T. Rowe Price Blue Chip Growth ETF, T. Rowe Price Dividend Growth ETF, T. Rowe Price Growth Stock ETF, T. Rowe Price Equity Income ETF, and, separately, T. Rowe Price U.S. Equity Research ETF⁵ (each, a “Fund” and, together, the “Funds”). The Exchange proposes to reflect an amendment to the Prior Exemptive Order (as defined below) governing the listing and trading of these Funds filed by, among others, T. Rowe Price Exchange-Traded Funds, Inc. (the “Issuer”), as follows.

The Issuer filed a seventh amended application for an order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (the “Prior Application”).⁶ On December 10, 2019, the Commission issued an order (the “Prior Exemptive Order”) under the 1940 Act granting the exemptions requested in the Application.⁷

Under the Prior Exemptive Order, the Funds are required to publish a basket of securities and cash that, while different from the Fund’s portfolio, is designed to closely track its daily performance (“Proxy Portfolio”). The Prior Application stated that each Fund’s Proxy Portfolio will be determined such that at least 80% of its total assets will overlap with the portfolio

⁵ On June 30, 2020, the Commission approved the proposed rule change relating to the listing and trading of shares of T. Rowe Price Blue Chip Growth ETF, T. Rowe Price Dividend Growth ETF, T. Rowe Price Growth Stock ETF, T. Rowe Price Equity Income ETF. See Securities Exchange Act Release No. 89191 (June 30, 2020), 85 FR 40358 (July 6, 2020) (SR-NYSEArca-2019-92) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, to List and Trade Four Series of Active Proxy Portfolio Shares Issued by T. Rowe Price Exchange-Traded Funds, Inc. Under NYSE Arca Rule 8.601-E) (“Approval Order”). The Commission published the notice of filing and immediate effectiveness relating to the rule change to list and trade shares of the T. Rowe Price U.S. Equity Research ETF on March 15, 2021. See Securities Exchange Act Release No. 91322 (March 15, 2021), 86 FR 14980 (March 19, 2021) (SR-NYSEArca-2021-17) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Listing and Trading of Shares of the T. Rowe Price U.S. Equity Research ETF under NYSE Arca Rule 8.601-E (“Notice”).

⁶ See File No. 812-14214, dated October 16, 2019.

⁷ See Investment Company Act Release No. 33713, December 10, 2019.

weightings of the Fund (the “Portfolio Overlap”). As set forth in the Approval Order and in the Notice, investments made by the T. Rowe Price Blue Chip Growth ETF, T. Rowe Price Dividend Growth ETF, T. Rowe Price Growth Stock ETF, T. Rowe Price Equity Income ETF, and T. Rowe Price U.S. Equity Research ETF will comply with the conditions set forth in the Prior Application and the Prior Exemptive Order.⁸

On February 4, 2021, as amended on March 30, 2021, the Issuer sought to amend the Prior Exemptive Order to permit use of creation baskets⁹ that include instruments that are not included, or are included with different weightings, in the Funds’ Proxy Portfolio (the “Updated Application”).¹⁰ In addition, the Updated Application noted that the Portfolio Overlap may be less than 80%.

On May 18, 2021, the Commission issued an amended order that, among other things, permits each Fund’s Portfolio Overlap to be less than 80% (the “Updated Exemptive Order”).¹¹ Accordingly, investments made by the T. Rowe Price Blue Chip Growth ETF, T. Rowe Price Dividend Growth ETF, T. Rowe Price Growth Stock ETF, T. Rowe Price Equity Income ETF, and T. Rowe Price U.S. Equity Research ETF will comply with this condition of the Updated Application and the Updated Exemptive Order.

⁸ See Approval Order, 85 FR at 40360, n. 18; Notice, 86 FR at 14981, n.9.

⁹ As set forth in the Notice, Shares of the Funds are purchased and redeemed in specified minimum size “Creation Units” and generally on an in-kind basis. Except where the purchase or redemption includes cash under the circumstances specified in the Notice, purchasers must purchase Creation Units by making an in-kind deposit of specified instruments (“Deposit Instruments”), and shareholders redeeming Shares will receive an in-kind transfer of specified instruments (“Redemption Instruments”). The names and quantities of the instruments that constitute the Deposit Instruments and the Redemption Instruments for a Fund are known collectively as a “Creation Basket” and are the same as a Fund’s designated Proxy Portfolio, except to the extent that a Fund requires purchases and redemptions to be made entirely or in part on a cash basis, as described below. See Notice, 86 FR at 14980.

¹⁰ See File No. 812-15197, dated March 30, 2021.

¹¹ See Investment Company Act Release No. 34272, May 18, 2021. Although the Updated Exemptive Order permits the use of Creation Baskets that include instruments that are not included, or are included with different weightings, in a Fund’s Proxy Portfolio, that aspect of the Updated Exemptive Order is not part of this proposed rule change.

Except for the change noted above, all other representations made in the respective rule filings remain unchanged and will continue to constitute continuing listing requirements for the Funds. The Funds will also continue to comply with the requirements of Rule 8.601-E.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5) of the Act,¹³ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.¹⁴

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The proposed revision is intended to reflect the change in the Updated Application and the Updated Exemptive Order that permits each of the Funds' Portfolio Overlap to be less than 80%. As noted, the Approval Order and the Notice reflected that the Funds' Portfolio Overlap would be at least 80%. The proposed rule change would permit the Funds to operate consistent with this updated condition in the Updated Application and the Updated Exemptive Order. Except for the changes noted above, all other representations made in the respective rule filings remain unchanged and, as noted, will continue to constitute continuing listing requirements for the Funds.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. As

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ The Exchange represents that, for initial and continued listing, the Fund will be in compliance with Rule 10A-3 under the Act, as provided by NYSE Arca Rule 5.3-E.

noted, the purpose of the filing is to reflect an amendment to the Prior Exemptive Order governing the listing and trading of these Funds. To the extent that the proposed rule change would continue to permit listing and trading of another type of actively-managed ETF that has characteristics different from existing actively-managed and index ETFs, the Exchange believes that the proposal would benefit investors by continuing to promote competition among various ETF products.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁷ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that the Funds will continue to comply with the requirements of Rule 8.601-E and that waiver of the operative delay would allow the Funds to operate in a

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

manner consistent with the Updated Application and Updated Exemptive Order. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.¹⁸

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2021-61 on the subject line.

Paper comments:

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2021-61. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies

¹⁸ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2021-61 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

J. Matthew DeLesDernier,

Assistant Secretary.

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¹⁹ 17 CFR 200.30-3(a)(12).